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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JAMES R. BURTON and HEATHER R.
BURTON, husband and wife,

Plaintiffs,

v.

IN ADMIRALTY

JERRY BLACKLER and VICKI
BLACKLER, husband and wife, husband and
wife, and ALPINE DIESEL, LLC, an Alaska
limited liability corporation,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY JUDGMENT
REGARDING LIEN CLAIM VALIDITY AND FOR DAMAGES**

COMES NOW plaintiff JAMES R. BURTON and HEATHER R. BURTON
(collectively “Burton”) by and through counsel, Holmes Weddle & Barcott, PC and
complains against defendants JERRY BLACKLER and VICKI BLACKLER and
ALPINE DIESEL, LLC (collectively “Alpine”) as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction is based upon 28 U.S.C. §1333, admiralty, and 28 U.S.C.
§1331, federal question, specifically 46 U.S.C. §31343. This is an admiralty or maritime

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1. claim within the meaning of Fed. R. Civ. P. 9(h).

2. 2. To the extent required the Court may exercise supplemental jurisdiction
3. based upon 28 U.S.C. §1367 because all of the claims form part of the same case or
4. controversy.
5.

6. 3. At all times material herein, F/V CRICKET, O.N. 962643, its engines,
7. machinery, appurtenances, etc., was a vessel duly documented under the laws of the
8. United States and was owned by Plaintiffs. The acts and omissions which form the basis
9. for this Complaint all occurred in this District.

10. 4. At all times material herein, Plaintiffs resided in the State of Alaska.

11. 5. At all times material herein, upon information and belief, Defendants
12. resided in the State of Alaska.
13.

14. II. FACTUAL BACKGROUND

15. 6. On or about June 30, 2016, the vessel CRICKET suffered a serious
16. casualty, requiring engine replacement and additional repairs. Shortly thereafter Alpine
17. was engaged by Burton to assist in performing repairs to the CRICKET and estimate total
18. repair costs.
19.

20. 7. During the initial inspection and repair phase, the parties agreed to a scope
21. of work and Alpine prepared an estimate for “complete” repairs to the vessel. This
22. estimate stated that Alpine’s charges for completed repairs to the CRICKET (excluding
23. parts, vendors and subcontractors) would be approximately \$240,000. The vessel’s
24. condition and accompanying Alpine estimate were reviewed by an independent surveyor
25.

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1. assigned by hull underwriters and the estimated charges were deemed fair and reasonable
2. for the agreed scope of work. Based on this estimate, Alpine's other representations, and
3. the surveyor's opinions, Burton agreed that Defendants should proceed with repairs.

4.
5. 8. Both before and after the initial estimate was given, Burton informed
6. Alpine, both verbally and in writing, that Burton was very sensitive to costs and would
7. not be able to tolerate significant changes or cost increases. To accommodate this, the
8. parties agreed that (a) Alpine would provide regular updates regarding progress of work
9. and estimated costs to be incurred to both Burton and the surveyor and (b) Alpine would
10. obtain Burton's prior authorization for any substantial changes or cost-overruns to the
11. project. Despite this agreement, Alpine failed to provide any such updates and did not
12. seek Burton's approval for changes, cost increases, or variations from the estimated
13. repair costs. Burton repeatedly emphasized the need for updates and warnings of cost
14. increases, but Alpine failed to provide these updates or notices. Alpine also failed to
15. provide regular invoicing or other description of changes as they were being incurred to
16. either Burton or the surveyor. At no point did Alpine obtain the surveyor's approval that
17. any changes or additional charges were fair or reasonable.
18.
19.

20. 9. Despite the agreement to provide updates and obtain pre-approval for any
21. cost increases, Alpine submitted a series of invoices ranging in the amount from
22. \$581,923.50 to \$534,106.75 to \$521,945.75. Aside from the inherent problem of the
23. changing invoices, all of them exceeded the original estimate by approximately
24. \$300,000. Burton did not approve these cost increases and did not authorize work on this
25.

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1. basis. The final invoices further reflect charges that are incorrect, inaccurate, and in
2. some cases are for work performed on other vessels. Thus, the final invoices do not
3. reflect either the parties' agreement as to repair costs, nor what actual work was done by
4. Alpine on the CRICKET. Further, the assigned independent surveyor determined that the
5. invoiced charges received were inflated and in gross excess of a fair and reasonable
6. amount.

8. 10. The vessel repair work was also significantly delayed. Alpine initially
9. estimated that installation and repair would be completed by March 2017. When project
10. conditions changed, the parties agreed to new completion dates, at which time Alpine
11. "guaranteed" that all repairs would be completed and the vessel would be in operating
12. condition before June 15, 2017. Burton informed Alpine that the project was time
13. sensitive and that repairs must be completed within the estimated times or the CRICKET
14. would lose fishing time. Alpine clearly represented that repairs would be completed on
15. time and would not interfere with fishing.

17. 11. Alpine failed to meet any of the agreed completion deadlines and failed to
18. act diligently and timely in effecting the installation and repair work. As a result, repair
19. completion was significantly delayed.

21. 12. As a direct and proximate result of the delays in the project caused by
22. Alpine, Plaintiff was unable to operate the CRICKET in planned fisheries and lost
23. income from the vessel as a result. Based on catch data and historical performance,
24. Plaintiffs' lost profits as a result of the delays to completion and breached promises
25.

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1. exceed \$100,000.

2. 13. On or about October 31, 2017, Alpine filed a Notice of Claim of Lien
3. with the United States Coast Guard, claiming a maritime lien for “vessel modification
4. and repair” in the amount of \$488,407.31.
5.

6. **III. FIRST CAUSE OF ACTION – VESSEL NOT SUBJECT TO LIEN**

7. 14. A party may claim a maritime lien against a vessel only insofar as he has
8. provided services and supplies that benefit the vessel and to the extent they were
9. authorized by the owner. The unreported, unauthorized, and increased parts and service
10. charges that form the basis for Alpine’s lien claim were not authorized by Burton and
11. therefore do not constitute a maritime lien against the Vessel.
12.

13. 15. Therefore, pursuant to 46 U.S.C. §31343(c)(2), Burton requests that the
14. Court declare that the Vessel is not subject to the lien filed against it by Defendants under
15. 46 U.S.C. §31343(b) in the amount of \$488,407.31.
16.

17. **IV. SECOND CAUSE OF ACTION – BREACH OF CONTRACT**

18. 16. The parties entered into a contract for repairs to the CRICKET. This is a
19. maritime contract. Under the parties’ agreement, Alpine was required to perform the
20. contracted-for repair work and supply the agreed materials based on the original estimate,
21. or as further authorized by Burton. Alpine performed unauthorized and unnecessary
22. work on the CRICKET and claims charges that were never approved as agreed, and these
23. unapproved changes form the basis for Alpine’s lien claim.
24.

25. 17. The parties further agreed on completion dates for vessel repair dates

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1. which were amended by agreement. In addition, Alpine made specific and clear
2. promises to Burton regarding completion dates and when the vessel would return to
3. service. Alpine failed to complete work as agreed or as promised, causing a delay of
4. over one month in the CRICKET's 2017 fishing operations, causing Plaintiffs to lose
5. profits in excess of \$100,000.
6.

7. **V. RELIEF REQUESTED**

8. **WHEREFORE**, Plaintiffs pray for judgment as follows:

9. 1. For a declaration that the F/V CRICKET, O.N. 962643, is not subject to
10. the Notice of Claim Lien filed by Alpine on October 31, 2017 in the amount of
11. \$488,407.31;
12.

13. 2. For an award of attorney's fees and costs to Plaintiffs pursuant to 46
14. U.S.C. § 31343(c)(2).
15.

16. 3. For a judgment in favor of Plaintiff and against Defendants for damages
17. for any and all consequences of Alpine's unauthorized repairs and delayed completion,
18. including but not limited to loss of use and lost profits.
19.

20. 4. For an award of attorney's fees, as provided by statute or under Alaska
21. Civil Rule 82.
22.

23. 5. For an award of such other and further relief as in law and equity Plaintiffs
24. may be entitled to receive.
25.

26. ////

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1. DATED this 14th day of December, 2017

2. HOLMES WEDDLE & BARCOTT, PC

3.
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26. **COMPLAINT - 7**

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